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No. 85-794

In The
Supreme Court of the United States
October Term, 1985

PREUIT & MAULDIN, a partnership;
and E. F. MAULDIN, individually and as Executor
of estate of Leonard Preuit, deceased;
and PREUIT MAULDIN,
Petitioners,

v.

SAMUEL JONES, JR.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF FOR THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA AS AMICUS CURIAE

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BRIEF FOR THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA AS AMICUS CURIAE

This brief is submitted on behalf of The Board of Trustees of The University of Alabama (The Board), as *amicus curiae,* with the written consent of all parties, given in letters which have been filed with the Clerk of this Court.

—o—

INTEREST OF THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA

This case involves a decision of the United States Court of Appeals for the Eleventh Circuit holding that the appropriate state statute of limitations to be applied in actions under 42 U.S.C. Section 1983 is Alabama's six year statute of limitations for actions sounding in trespass.[1]

The Board is an incorporated institution of higher education with three campuses having a total enrollment of approximately 35,000; it also employs a total of approximately 14,000 persons. As such, The Board is confronted with numerous claims arising out of Section 1983. The basic issue posed by this case, however, is one of deepest concern, not only to The Board, but also to all potential litigants in Section 1983 actions. This question has implications extending far beyond the particular facts now presented to this Court. Accordingly, The Board desires to stress the importance of review by the Court in this case.

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1 *Ala. Code* § 6-2-34 (1975).

As cases decided since *Wilson v. Garcia*, — U.S. —, 105 S. Ct. 1938 (1985), have demonstrated, there is a need for further guidance from the Court with regard to its language "personal injury actions" as used in *Wilson*.[2] Where a state has but one personal injury statute of limitations, there would seem to be no problem of judicial interpretation[3]; however, where a state such as Alabama has more than one statute for personal injuries, there remains confusion as to which statute to apply, as more fully appears in the Petition for Writ of Certiorari herein.

For the foregoing reasons, The Board has a very real interest in the outcome of this case and respectfully requests that the Petition for Writ of Certiorari be granted.

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SUMMARY OF ARGUMENT

The United States Supreme Court, in *Wilson v. Garcia*, — U.S. —, 105 S. Ct. 1938 (1985), directed federal courts to choose the one personal injury statute of limitations to be applied to all actions under 42 U.S.C. Section 1983. This holding did not address the situation where a state has enacted more than one personal injury statute. Circuits have used differing reasoning and have reached different results when confronted with this situation. As a result, further guidance from the Court is needed.

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2 *Wilson v. Garcia*, — U.S. —, —, 105 S. Ct. 1938, 1949 (1985).

3 *But see Shorters v. City of Chicago*, — F. Supp. —, No 85-C-6078 (N.D. Ill. Sept. 6, 1985).

ARGUMENT

THERE REMAINS CONFUSION AMONG THE CIRCUITS REGARDING THE PROPER STATE STATUTE OF LIMITATIONS FOR SECTION 1983 ACTIONS AND THEREFORE THIS COURT SHOULD GRANT THE PETITION FOR WRIT OF CERTIORARI IN THE PROCEEDING AND ESTABLISH A UNIFORM STANDARD.

In *Wilson v. Garcia*, — U.S. —, 105 S. Ct. 1938 (1985), the Court was confronted with the issue of which state statute of limitations was appropriate in an action brought pursuant to 42 U.S.C. Section 1983. The Court's decision was made necessary by the numerous and varied approaches adopted by the Circuit Courts of Appeal. Expressing a desire for uniformity within each state and certainty in litigation, tht Court indicated that such claims "are best characterized as personal injury actions."[4] Federal courts were directed to select, in each state, one statute of limitations appropriate for all Section 1983 actions.[5] Left unaddressed was the situation where a state has enacted more than one personal injury statute of limitations. As a result, various federal courts have struggled to determine which statute should be chosen, in light of the Court's opinion in *Wilson*.

This conflict among the Circuits may be seen by examining the opinions of those courts. For instance, the Eleventh Circuit, in *Jones v. Preuit & Mauldin*, 763 F.2d 1250 (11th Cir. 1985), the case from which the present petition arose, held that Alabama's six year statute of lim-

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[4] *Wilson v. Garcia*, — U.S. —, 105 S. Ct. 1938, 1949 (1985).

[5] *Id.* at 1947.

itations applied.[6] Noting that the six year statute was applicable to actions sounding in trespass, as opposed to Alabama's one year statute of limitations for trespass on the case,[7] the Court opined that a Section 1983 claim "resembles an action in trespass rather than trespass on the case."[8]

Similar reasoning may be found in *Gates v. Spinks*, 771 F.2d 916 (5th Cir. 1985). In that case, the Fifth Circuit, relying largely on the Eleventh Circuit's opinion in *Jones*, held that Section 1983 actions were best characterized as actions in trespass for purposes of borrowing a state statute of limitations.[9] Thus, the Court chose Mississippi's one year statute [10] which included "[a]ll actions for assault, assault and battery, maiming, [and] false imprisonment."[11] The result in *Gates*, it should be noted, relegated all Section 1983 actions in Mississippi to a one year period in which to file suit.

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6 *Ala. Code* § 6-2-34 (1975) provides in pertinent part: "The following must be commenced within six years: (1) Actions for any trespass to person or liberty, such as false imprisonment or assault and battery; . . . ."

7 *Ala. Code* § 6-2-39(a)(5) (1975) provides: "The following must be commenced within one year: . . . (5) Actions for any injury to the person or rights of another not arising from contract and not specifically enumerated in this section; . . . ." This section was repealed effective January 9, 1985, by Acts of Alabama of 1984, 2d Exec. Sess., No. 85-39, § 3.

The current two year statute of limitations for negligent personal injury (trespass on the case) may now be found at *Ala. Code* § 6-2-38(1) (Supp. 1985).

8 *Jones v. Preuit & Mauldin*, 763 F.2d 1250, 1254 (11th Cir. 1985).

9 *Gates v. Spinks*, 771 F.2d 916, 919-20 (5th Cir. 1985).

10 *Miss. Code Ann.* § 15-1-35 (1972).

11 *Id.*

The Tenth Circuit, on the other hand, in the companion cases to *Garcia v. Wilson*, 731 F.2d 640 (10th Cir. 1984) (en banc), *aff'd*, — U.S. —, 105 S. Ct. 1938 (1985), has previously rejected the use of statutes aimed at intentional personal injuries. In *Hamilton v. City of Overland Park, Kansas*, 730 F.2d 613 (10th Cir. 1984) (en banc), *cert. denied*, — U.S. —, 105 S. Ct. 2111 (1985), the Kansas one year statute for "assault, battery, malicious prosecutions, or false imprisonment,"[12] was rejected. Instead, the Court chose to apply the Kansas two year statute for "[a]n action for injury to the right of another, not arising on contract, and not herein enumerated," found in *Kansas Statutes Annotated* Section 60-513(a) (4) (1976). Likewise, in *Mismash v. Murray City*, 730 F.2d 1366 (10th Cir. 1984) (en banc), *cert. denied*, — U.S. —, 105 S. Ct. 2111 (1985), the Court refused to apply Utah's one year statute of limitations for "libel, slander, assault, battery, false imprisonment or seduction."[13] Finally, in *McKay v. Hammock*, 730 F.2d 1367 (10th Cir. 1984) (en banc), the Court refused to find applicable Colorado's assault and battery and false imprisonment statute,[14] stating that Section 1983 actions involve more than "direct application of force."[15] Admittedly, the above cited cases were decided prior to the Court's decision in *Wilson*, but the Tenth Circuit's reasoning is nevertheless consistent with the holding in *Wilson*.

One final instance of confusion is *Shorters v. City of Chicago*, — F. Supp. —, No. 85-C-6078 (N.D. Ill. Sept. 6, 1985), where the district court refused to apply the Illinois

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12 *Kan. Stat. Ann.* § 60-514(2) (1976).

13 *Utah Code Ann.* § 78-12-29(4) (1953).

14 *Colo. Rev. Stat.* § 13-80-102 (1973).

15 *McKay v. Hammock*, 630 F.2d 1367, 1370 (10th Cir. 1984) (en banc).

statute of limitations for "injury to the person, or for false imprisonment or malicious prosecution."[16] The Court reasoned that Section 1983 actions encompassed a "far broader range of harms" than direct physical injury. State law, the court indicated, had construed the Illinois statute to apply only to direct physical injury.

The foregoing examples clearly indicate that further guidance from the Court is needed. It is but a matter of time before other circuits, attempting to apply *Wilson* in choosing the proper state personal injury statute of limitations, contribute to the confusion in this area. Only by addressing this question of paramount significance will the Court bring an end to the continuing uncertainty by indicating whether in states which have more than one personal injury statute of limitations, Section 1983 actions are best characterized as actions in trespass or as actions of trespass on the case.

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CONCLUSION

The question of which Alabama statute of limitations is appropriate for Section 1983 actions is one of profound importance to The Board, as well as to all parties in all states who may become litigants in Section 1983 actions. For the foregoing reasons, The Board respectfully requests this Court to grant the petition and allow full briefing of this important issue. If the petition in this case is granted, the Board will urge this Court to reverse the

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16 *Ill. Rev. Stat. ch. 110,* § 13-202.

decision of the Eleventh Circuit Court of Appeals in this case, which it feels is unsound as a matter of public policy.

Respectfully submitted,

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